IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8797 OF 2004

The Muslim Co-operative
Bank Ltd. .. Petitioner.
Vs.
Smt.Rukminibai Lalchand
Kachi and Others .. Respondents.

Mr.A.M.Joshi for the petitioner.
Mr.N.P.Deshpande for respondent nos.1 to 5.

CORAM : D.B.BHOSALE, J.

DATED : 6TH NOVEMBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent nos.1 to 5.

2. This writ petition is directed against the judgment and order dated 31.5.2004 passed by the appeal court by which the appeal filed by the respondents-plaintiffs has been allowed. The petitioner-defendant was a tenant in the suit premises owned by the respondents. The suit was filed for ejectment on the ground of bonafide requirement. Mr.Joshi, learned counsel for the petitioner assailed the judgment of the appeal court on two grounds. Firstly, that the plaintiffs have concealed from the court that they have several other premises available and on this ground alone the suit deserves to be dismissed. He further submitted that the requirement

of the suit premises was not reasonable and bonafide as claimed by the respondents. In support of this submission he placed reliance upon the judgment of the Apex Court in **(2003) 9 Supreme Court Cases 151 Kishanchand Vs. Jagdish Pershad & Others.** Secondly, he submitted that the suit filed by the respondents should fail for want of statutory notice under section 164 of the Maharashtra Co-operative Societies Act.

3. Having regard to the submissions advanced by the learned counsel for the petitioner and the overall facts and circumstances of the case, the issue over here is not only concealment of facts but the acquisition of alternative premises and bonafide requirement as well and it is abundantly clear that the appeal court has considered both the issues in proper perspective. My attention was drawn to the judgment of the appeal court and in particular paragraph 7 thereof as also the evidence of Majahar Khan, examined by the petitioner-bank, to contend that 3-4 other premises were owned by the resopndents-plaintiffs at the relevant time and they were available to them and that fact was concealed from the court. Perusal of the judgment and in particular paragraph 7 thereof and the evidence of Majahar khan, I find that the reference to 3-4 properties of the respondent was made. The appeal court has taken that into consideration and has

recorded a categoric finding that those premises were either not available to the respondents or they were not found suitable/sufficient to accomodate all the respondents. In the cross examination of Majahar Khan and in particular paragraph 3 thereof, he has clearly stated that none of the premises, which are allegedly owned and in possession of the respondents, was seen by him and that they were in actual possession of the respondents-plaintiffs. Besides, in paragraph 10 of the judgment the appeal court has recorded a categoric finding that the petitioners have acquired the premises admeasuring 7000 sq. ft. for their banking business and that they have shifted to the said premises and the suit premises is kept under lock. The relevant observations in paragraph 10 reads thus:

> "10. When the matter was in the appellate court at that time, plaintiff sought amendment in the plaint itself and thereby added a portion that the defendant has got premises in the building of Mr.Poonawala and accordingly, he also shifted the entire banking business to the said building. This fact is also not denied by respondent. Not only this but when further exam-in-chief in the form of affidavit is placed on record, defendant chose not to cross examine the plaintiff in respect of those contentions on oath and as such entire evidence vide Ex.21 in appeal goes unchallenged. It is specifically stated by plaintiffs that defendants have closed their business in the suit premises and shifted to some other premises from 15th November, 2001. They obtained the area more than 7000 sq. ft. and same is also convenient for them. It is also specifically averred that suit premises is kept under lock and defendants are not using the same. Along with his evidence, plaintiffs have also placed on record the letter issued by the defendant along with

> Ex.18. In view of the oral evidence, said letter is marked as Ex.22 in the appeal. Said letter shows the present address of the defendant. It is pertinent to note that defendant called upon plaintiff for negotiation and for taking decision regarding handing over of possession of plaintiff's premises and plaintiff was called upon to meet on the new address where the bank had shifted its office. So contention which is taken on oath and also by way of amendment in the plaint and defendant has left the premises and started their business in the new premises, is well corroborated by document of defendant himself vide Ex.22. It seems from the notice issued from 1992 onwards., so also from the plaint, than, it is contention of the plaintiff that after satisfaction of the loan, when plaintiff met the concerned persons and demanded possession for their use and occupation, at that time, defendant assured them that they will vacate premises and sought certain time for searching another premises. It is also contention that defendant showed the new premises, where they are shifting their business in the building of Poonawala and it seems that during the pendency of present appeal, defendant really shifted to the said premises. So since 1992 onwards, what is alleged by the plaintiff found to be correct in view of the behaviour of the defendant. On this background, can it be said that evidence of the plaintiff cannot be believed ? Certainly not. On the contrary, subsequent act of defendant of shifting their business in another premises shows that whatever plaintiffs were alleging must be having some truth."

4. In view of the findings of fact recorded by the court below, the judgment relied upon by Mr.Joshi, is of no avail. Even on the question of comparative hardship, the court below has rightly held that no hardship will be caused to the respondents if a decree is passed. Considering the findings of fact recorded by the court below and as I find that there is sufficient material on record to sustain those

findings and considering extremely limited jurisdiction of this court under Article 227 of the Constitution of India to disturb the findings of fact, the first contention advanced by Mr.Joshi, learned counsel for the petitioner must fail and is rejected accordingly.

5. Insofar as the second contention as to the omission on the part of the respondents to issue notice under section 164 of the Maharashtra Co-operative Societies Act is concerned, the court below has rightly rejected the same holding that such notice is necessary only if the suit is instituted against the society, or any of its officers, in respect of any act touching the business of the society. In our case it was a suit between the landlord and the tenant and in any case it was not touching the business of the society. In the circumstances this writ petition fails and is dismissed as such.

6. At this stage Mr.Joshi, learned counsel for the petitioner prayed for stay to the operation of this order for a period of six weeks. Though Mr.Deshpande, learned counsel for respondent nos.1 to 5 opposed the prayer made by Mr.Joshi, I am inclined to allow the prayer. Hence this order shall remain stayed for a period of six weeks from today subject to

the petitioner filing usual undertaking within two weeks from today. The writ petition is disposed of.

(D.B.Bhosale, J.)